

The Honorable Robert S. Lasnik

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

STATE OF WASHINGTON; STATE OF
CONNECTICUT; STATE OF MARYLAND;
STATE OF NEW JERSEY; STATE OF NEW
YORK; STATE OF OREGON;
COMMONWEALTH OF
MASSACHUSETTS; COMMONWEALTH
OF PENNSYLVANIA; DISTRICT OF
COLUMBIA; STATE OF CALIFORNIA;
STATE OF COLORADO; STATE OF
DELAWARE; STATE OF HAWAII; STATE
OF ILLINOIS; STATE OF IOWA; STATE
OF MINNESOTA; STATE OF NORTH
CAROLINA; STATE OF RHODE ISLAND;
STATE OF VERMONT and
COMMONWEALTH OF VIRGINIA,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
STATE; MICHAEL R. POMPEO, in his
official capacity as Secretary of State;
DIRECTORATE OF DEFENSE TRADE
CONTROLS; MIKE MILLER, in his official
capacity as Acting Deputy Assistant Secretary
of Defense Trade Controls; SARAH
HEIDEMA, in her official capacity as Director
of Policy, Office of Defense Trade Controls
Policy; DEFENSE DISTRIBUTED; SECOND
AMENDMENT FOUNDATION, INC.; AND
CONN WILLIAMSON,

Defendants.

NO. 2:18-cv-01115-RSL

ORDER GRANTING PLAINTIFF
STATES' MOTION FOR A
PRELIMINARY INJUNCTION

[PROPOSED]

HEARING DATE: AUGUST 21, 2018

1 This matter came before the Court on the Plaintiff States’ Motion for a Preliminary
 2 Injunction, which seeks to convert the Temporary Restraining Order issued by the Court on
 3 July 31, 2018 to a preliminary injunction. The Court has considered the motion and documents
 4 filed therewith, including declarations and the exhibits attached thereto, the pleadings and entire
 5 record in this case, and the arguments of counsel at a hearing held on August 21, 2018 in open
 6 court. Having considered the foregoing, the Court finds that it has jurisdiction over the subject
 7 matter of this action and the Plaintiff States have standing to pursue their claims, and that a
 8 preliminary injunction is warranted pursuant to Fed. R. Civ. P. 65 for the reasons below.

9 1. The standard for obtaining a preliminary injunction is substantively the same as
 10 the standard for obtaining a temporary restraining order. In order to obtain preliminary injunctive
 11 relief, plaintiffs must establish that “(1) they are likely to succeed on the merits; (2) they are
 12 likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities
 13 tips in their favor; and (4) an injunction is in the public interest.” *Short v. Brown*, 893 F.3d 671,
 14 675 (9th Cir. 2018) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). In the
 15 Ninth Circuit, “if a plaintiff can only show that there are serious questions going to the
 16 merits—a lesser showing than likelihood of success on the merits—then a preliminary injunction
 17 may still issue if the balance of hardships tips *sharply* in the plaintiff’s favor, and the other two
 18 *Winter* factors are satisfied.” *Feldman v. Ariz. Sec’y of State’s Office*, 843 F.3d 366, 375 (9th
 19 Cir. 2016) (quoting *Shell Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281, 1291 (9th Cir.
 20 2013)) (internal quotation marks omitted, emphasis in original).

21 2. The Plaintiff States have shown a likelihood of success on the merits of their
 22 Administrative Procedure Act claim, as the evidence presented indicates that the Government
 23 Defendants issued a “temporary modification” that has resulted in the removal of one or more
 24 items from the U.S. Munitions List without providing 30 days’ notice to Congress, as required

1 by the governing statute, 22 U.S.C. § 2778(f)(1). The evidence also indicates that the Secretary
 2 of Defense did not concur in the removal of such items from the Munitions List, as required by
 3 the delegating Executive Order. In addition, the Government Defendants issued a letter to
 4 Defense Distributed on July 27, 2018 (Letter) advising that its files are “approved for public
 5 release (i.e., unlimited distribution”) without following the required procedures. Finally, the
 6 Plaintiff States are likely to prevail in establishing that the Government Defendants’ actions were
 7 “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”
 8 5 U.S.C. § 706(2)(A).

9 3. The Plaintiff States have shown a likelihood of irreparable injury if the Court’s
 10 Temporary Restraining Order is not converted to a preliminary injunction. If the Temporary
 11 Modification and the letter go into effect, the States will suffer irreparable harm to their ability
 12 to enforce their laws and protect the safety and health of their residents and visitors due to the
 13 proliferation via the internet of undetectable, untraceable, 3D-printable firearms. Against this
 14 hardship is a delay in lifting regulatory restrictions that have been in place for over five years:
 15 the balance of hardships and the public interest tip sharply in the States’ favor.

16 For the foregoing reasons, the Plaintiff States’ Motion for a Preliminary Injunction is
 17 GRANTED. The Temporary Restraining Order issued by the Court on July 31, 2018 is converted
 18 to a preliminary injunction, as follows:

19 The federal government defendants and all of their respective officers, agents, servants,
 20 employees, and attorneys, and any other persons who are in active concert or participation with
 21 any of the foregoing persons or entities, are hereby preliminarily enjoined from implementing or
 22 enforcing the “Temporary Modification of Category I of the United States Munitions List” and
 23 the Letter to Cody R. Wilson, Defense Distributed, and Second Amendment Foundation issued
 24 by the U.S. Department of State on July 27, 2018, and shall preserve the status quo *ex ante* as if

1 the modification had not occurred and the letter had not been issued.

2 This preliminary injunction shall take effect immediately and shall remain in effect
3 pending trial in this action or further order of the Court.

4 No bond shall be required.

5 It is SO ORDERED.

6 ISSUED this _____ day of _____, 2018.

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ROBERT S. LASNIK
UNITED STATES DISTRICT JUDGE

10 ROBERT W. FERGUSON
11 Attorney General

12 /s/ Jeffrey Rupert
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17 Attorneys for Plaintiff State of Washington

DECLARATION OF SERVICE

I hereby certify that on August 9, 2018, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will serve a copy of this document upon all counsel of record.

DATED this 9th day of August, 2018, at Seattle, Washington.

/s/ Jeffrey Rupert

JEFFREY RUPERT